SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 70

IRA TAYLOR,

Appellant,

vs.

THE STATE OF GEORGIA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF FOR THE APPELLANT.

LEONARD HAAS,
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This is an appeal from a judgment of the Supreme Court of Georgia affirming the conviction of appellant as a common cheat and swindler by the Superior Court of Wilkinson County, Georgia.

Opinions Below.

No opinion was written by the trial court.

The opinion of the Supreme Court of Georgia (R. 39-42) is reported in 191 Ga. 682.

Jurisdiction.

The judgment of the Supreme Court of Georgia was entered on March 13, 1941. The Petition for the allowance of an appeal was filed in that Court on April 8, 1941 (R. 42), and was allowed by an order of the Chief Justice of the Supreme Court of Georgia on the same date (R. 46).

The jurisdiction of this Court is invoked under Section 237 (a) of the Judicial Code, as amended (U. S. C. Title 28, Section 344a), the validity of a State Statute under the Federal Constitution having been drawn into question and the decision having been in favor of its validity.

This Court noted probable jurisdiction on May 26, 1941 (*Taylor* v. *The State of Georgia*, 312 U. S. —, 61 Sup. Ct. R. 1105).

Question Involved.

Whether the Act of August 15, 1903 (Ga. Laws 1903, p. 90; Section 26-7408 and 26-7409, Code of 1933; Penal Code, Section 715 and 716), enacted by the Georgia Legislature, violates the 13th and 14th Amendments to the Constitution of the United States and the provisions of the Federal Peonage Statute, being the Act of Congress of March 2, 1867, Chap. 187, Section 1, 14 Stat. at L. p. 546, found in R. S. Sec. 1990 and Sec. 5526 (U. S. C. Title 8, Sec. 56 and U. S. C. Title 18, Sec. 444).

Statutes Involved.

The Georgia Statute under which the appellant was tried and convicted, and the validity of which is assailed by appellant, is the Act of August 15, 1903 (Ga. Laws 1903, p. 90; Section 26-7408 and 26-7409, Code of 1933; Penal Code Section, 715 and 716), as follows:

> "Section 1. Be it enacted • • • That from and after the passage of this Act if any person shall con-

tract with another to perform for him services of any kind with intent to procure money, or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer; or after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as prescribed in section 1039 of the Code.

"Sec. 2. Be it further enacted, That satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failue to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

The 13th Amendment to the Constitution of the United States provides:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this Article by appropriate legislation."

The 14th Amendment to the Constitution of the United States provides:

"Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Peonage Abolition Act, the Act of Congress of March 2, 1867, Chap. 187, 14 Stat. 546 (Rev. Stat. 1990, 5526; U. S. C., Title 8, Sec. 56, U. S. C., Title 18, Sec. 444) provides:

> "Sec. 1990. The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the territory of New Mexico, or in any other territory or state of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the territory of New Mexico, or of any other territory or state, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void." (U. S. C., Title 8, Sec. 56.)
>
> "Sec. 5526. Every person who holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return, of any person to a condition of peonage, shall be punished by a fine of not less than one thousand nor more than five thousand dollars, or by imprisonment not less than one year nor more than five years, or by both." (U. S. C., Title 18, Sec. 444.)

Statement.

On April 29, 1940, in the Superior Court of Wilkinson County, Georgia, the Appellant, a negro, was convicted (R. 11) of the crime of violating Section 715 and 716 of the Penal Code of Georgia (*Supra*, pages 2-3).

He was sentenced to pay within three days a fine of Thirty-five Dollars and costs, or in default thereof to "do work in a public work camp for a period of eight months" (R. 11-12).

As pertinent, the indictment charged that the Appellant on March 25, 1939:

"contracted with R. L. Hardie to do manual labor for him at $1.25 a day in helping build a house on the farm of R. L. Hardie where he then resided in said county, said work to begin when R. L. Hardie called for him to start and to continue until he had worked out the sum of $19.50, did on the strength of said contract procure an advance on said labor of $19.50, with intent not to perform same and did fail and refuse to perform same without good and sufficient cause and did fail and refuse to pay the money so advanced back at the time the work was to be performed, to the loss and damage of the hirer" (R. 4-5).

The Appellant demurred to the indictment (R. 6-9) contending that the instant penal provisions violated the 13th and 14th Amendments to the Constitution of the United States (*Supra*, page 3), and the Peonage Abolition Act (*Supra*, page 4).

The Demurrer was overruled by the Court, to which ruling Exceptions *Pendente Lite* were filed.

The testimony on behalf of the State of Georgia may be summarized as follows:

The sole witness for the State was the prosecutor, one Hardie (R. 1; R. 16-18). He testified that he was a country merchant (R. 16); that he made loans to those who traded with him (R. 16); that the Appellant traded [illegible] (R. 13); that the Appellant rented a house that belonged to Hardie at $4.00 a month (R. 14); that he lived therein for a period of three months without paying rent (R. 14); that on or about March 5, 1939, he caused the arrest of Appellant (R. 14); apparently for non-payment of rent, and thereafter advanced payments to Appellant for Sheriff's costs (R. 14) and for the satisfaction of the warrant (R. 16) thereby causing Appellant's release (R. 14; R. 16-17), and at the same time receiving a promise from Appellant that he would "work it out" (R. 16).

He also testified that subsequently, to-wit, on March 29, 1939, he gave Appellant the sum of $19.50 as an advance payment, pursuant to an alleged agreement made on March 25, 1939, which in effect provided that the Appellant would do manual labor at the rate of $1.25 per day at some future day, whenever Hardie would undertake to build a house on his premises (R. 12-13); Hardie further testified that he began building said house in June or July, 1939 (R. 18), and at that time requested the Appellant to perform the manual labor specified in the said agreement of March 25, 1939 (R. 15), but the Appellant, according to the testimony of Hardie, refused to perform such manual labor, even though he was not working for any one, claiming that he was tired and sick, and promised that "he would get up the money" (R. 13).

According to Hardie, the Appellant never returned the sum of $19.50, and Hardie testified that while he took no legal steps to collect said money (R. 13), he caused Appellant to be indicted and charged with the crime of violating Sections 715 and 716 of the Penal Code of Georgia, *Supra*, pp. 2-3 (R. 13, 18).

Under the laws of Georgia, the accused is not permitted to be sworn as a witness in his own behalf,[1] but he has the right to make an unsworn statement which "shall have such force only as the jury may think right to give it" (Georgia Code 1933, Sec. 38-415). In making his unsworn statement to the jury, the Appellant in effect denied that

[1] Code of Georgia 1933, Sec. 38-415, 416. He cannot be sworn as a witness even with his own consent (*Roberts* v. *State*, 189 Ga. 36 (1), neither questioned by his own counsel (*Brown* v. *State*, 58 Ga. 212, nor cross-examined by the State. (Georgia Code Sec. 38-415).

The Statement is not regarded as evidence (*Bragg* v. *State*, 15 Ga. App. 623 (4)), because "evidence given by a witness has inherent strength, which even a jury cannot under all circumstances disregard. A statement has none." (*Hackney* v. *State*, 101 Ga. 512, 520).

The statement is "outlawed" as evidence (*Prater* v. *State*, 160 Ga. 138, 143).

there existed any contract between himself and Hardie to perform manual labor for Hardie in the future at a time to be fixed by Hardie, and denied that he had obtained from Hardie the sum of $19.50 (R. 15-16).

The Court charged the jury in the language of the Statute (R. 19-23), and refused to charge, as requested by the Appellant, that the Statute was unconstitutional and void (R. 23). A verdict of guilty was found by the jury (R. 11).

After sentence by the Court (R. 11-12), the Appellant filed his Amended Motion for New Trial and Motion in Arrest of Judgment based on the same constitutional grounds set up in his General Demurrer to the indictment, and upon the additional ground that the Statute was repugnant to the provisions of the Constitution of the State of Georgia prohibiting imprisonment for debt (R. 24-38).

The trial court overruled the Motion in Arrest of Judgment and the Amended Motion for New Trial (R. 38), and the Appellant appealed to the Supreme Court of Georgia, his Bill of Exceptions assigning error on the action of the trial court in overruling his General Demurrer to the indictment, his Motion in Arrest of Judgment, and his Motion for New Trial as amended (R. 38).

The Supreme Court of Georgia affirmed the judgment of the lower court, holding that (a) the Statute is not violative of the 13th Amendment to the Constitution of the United States nor of the Act of Congress forbidding peonage found in United States Revised Statutes 1990, 5526 (U. S. C. Title 8, Sec. 56; U. S. C. Title 18, Sec. 444); (b) nor is said Statute violative of Article 1, Section 1, Paragraph 21, of the Constitution of Georgia, prohibiting imprisonment for debt; (c) nor is the Statute violative of the Due Process Clause and the Equal Protection clause of the 14th Amendment to the Constitution of the United States; (d) nor did the Court err in charging the jury in terms of the Statute, nor in refusing Defendant's request to charge that the

Statute was unconstitutional and void; (e) the Court refused to overrule its prior decisions holding the Statute valid, and held that the decisions of the Supreme Court of the United States in the cases of *Bailey* v. *Alabama*, 219 U. S. 219; *Manley* v. *State of Georgia*, 279 U. S. 1, and *Western & Atlantic Ry. Co.* v. *Henderson*, 279 U. S. 639, were not controlling (R. 39-42).

Assignments of Error.

1.

The Supreme Court of Georgia erred in holding that the Statute of the State of Georgia, to-wit: the Act of August 15, 1903, is not violative of the 13th Amendment to the Constitution of the United States, which prohibits slavery or involuntary servitude except as punishment for crime, nor of the Acts of Congress forbidding peonage found in United States Revised Statutes, Section 1990, 5526 (U. S. C. Title 8, Sec. 56, U. S. C. Title 18, Sec. 444).

2.

The Supreme Court of Georgia erred in holding that the said Statute is not violative of the Due Process Clause of the 14th Amendment to the Constitution of the United States.

3.

The Supreme Court of Georgia erred in holding that the said Statute is not violative of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States.

4.

The Supreme Court of Georgia erred in holding that the decisions of this Court in *Bailey* v. *Alabama*, 219 U. S. 219, and *Manley* v. *State of Georgia*, 279 U. S. 1, were not controlling.

5.

The Supreme Court of Georgia erred in affirming the judgment of the Superior Court of Wilkinson County, Georgia, convicting the Appellant of violating the Act of August 15, 1903, as against the Appellant's contention that the said Act is repugnant to the 13th and 14th Amendments to the Constitution of the United States and to the provisions of the Acts of Congress forbidding peonage, found in United States Revised Statutes, Section 1990, 5526 (U.S.C. Title 8, Sec. 56; U.S.C. Title 18, Sec. 444).

Summary of Argument.

1. The Georgia Statute herein assailed is violative of the 13th Amendment to the Constitution of the United States and of the Act of Congress forbidding peonage, in that the fundamental purpose of the Statute is to compel, under the sanction of the criminal law, the enforcement of a contract for personal service. Though the Statute purports to punish fraud, its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt. The State may not compel a man to labor for another in payment of a debt by punishing him as a criminal if he does not perform the service or pay the debt, nor can it accomplish the same result by creating a statutory presumption which, upon proof of no other fact, exposes him to conviction and punishment. The Statute seeks in that way to provide the means of compulsion through which performance of such service may be secured. "The power to create presumptions is not a means of escape from constitutional restrictions."

2. The Georgia Statute is violative of the Due Process Clause of the 14th Amendment, in that the presumption of fraudulent intent created by the Statute is unreasonable and

arbitrary, as the failure to complete the service or to return the money bears no logical relation to the fact presumed, and points to no specific act or omission on the part of the accused tending to show any fraudulent intent. The operation and effect of the Statute is a legislative declaration or fiat declaring the Defendant presumptively guilty of crime, and operates to deny the accused a fair opportunity to repel it. Inference of crime and guilt may not reasonably be drawn from mere refusal to complete the service or to return the money. The presumption of guilt raised by the Statute is thus made sufficient to outweigh the presumption of innocence, and puts the burden on the accused to negative or explain away every fact which might tend to show a fraudulent intent; especially since, under the laws of Georgia, the accused may not, for the purpose of rebutting the statutory presumption, testify as a witness under oath.

3. The Georgia Statute is further violative of the Due Process Clause of the 14th Amendment to the Federal Constitution in that it is too vague, indefinite and uncertain to provide a sufficiently ascertainable standard of guilt, the Statute failing to define what is meant by "good and sufficient cause." The Statute leaves the standard of guilt to be determined by the views of the different Courts and juries which may be called upon to enforce the Statute. "Men of common intelligence must necessarily guess at its meaning and differ as to its application." It fails to furnish the accused information as to the nature and cause of the accusation against him.

4. The Georgia Statute is repugnant to the Equal Protection Clause of the 14th Amendment to the Federal Constitution, because it creates an unlawful discrimination against the laboring class, and confers a special privilege or immunity on all other persons. "The parties to a con-

tract are entitled to equal sanctions of the law for the protection and enforcement of their rights under it."

ARGUMENT.

I.

The statute is violative of the 13th Amendment to the Federal Constitution which prohibits slavery or involuntary servitude, except as punishment for crime, and of the Act of Congress forbidding peonage.

It is a strange anomaly that Georgia, colonized as a protest against the English custom of imprisonment for debt, has itself legalized the same custom. It is stranger still that this practice is permitted in the face of the provision of the Constitution of the State of Georgia, which prohibits imprisonment for debt (Code 1933, Section 2-121). Not only so, but the Act of August 15, 1903, which makes it possible to imprison men for debt in Georgia, also operates to create and maintain a condition or system of peonage, in which large numbers of unfortunates are still being held. That the Emancipation Proclamation and the 13th Amendment did not succeed in freeing the slaves, and that involuntary servitude still exists in the form of peonage, is widely commented on in the current public press since the recent indictment of Georgia citizens by a Federal Grand Jury in Chicago.[2]

At a meeting of the Georgia Baptist Convention in 1929, a Resolution, unanimously adopted by the Convention, recited that:

> "There are more negroes held by these debt slavers than were actually owned as slaves before the War be-

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[2] See *News Week*, June 2, 1941, p. 15; *New York Times*, May 30, 1941, pages 3, 4, column 1; *Atlanta Constitution*, May 30, 1941, page 1; *Associated Press Dispatches*, May 10, May 12, and May 30, 1941.

tween the States. The method is the only thing which has changed."[3]

On April 22, 1921, the situation in Georgia became so acute that the Governor of Georgia felt it necessary to call a conference of leading citizens to meet in the City of Atlanta to consider the condition of the negro in Georgia. In his address to the Conference, he recounts in detail 135 cases of peonage and other cruelties which "without design, or the knowledge of each other, Georgians, with one exception, have called these cases to my attention as Governor of Georgia."[4]

In the course of the address the Governor stated:

> "As Governor of Georgia, I have asked you, as citizens having the best interests of the State at heart, to meet here today to confer with me as to the best course to be taken. To me it seems that we stand indicted as a people before the world. If the conditions indicated by these charges should continue both God and man would justly condemn Georgia more severely than man and God have condemned Belgium and Leopold for the Congo atrocities."[5]

In closing his address he urges as a remedy "to end these conditions" six proposals, the fifth one of which was:

> "The repeal of Code Section 716 together with 715 which reads as follows:"[6]

Then follows the Sections of the Criminal Code, which are the identical Sections assailed herein.

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[3] See *Proceedings of Georgia Baptist Convention*, 1939, p. 45, published by Foote & Davies, Atlanta, Georgia.

[4] See page 2 of pamphlet entitled "A Statement from Governor Hugh M. Dorsey As to the Negro in Georgia April 22, 1921" on file in Reference Department (R. 326) of the Carnegie Library, in Atlanta, Georgia.

[5] See pages 22 and 23 same pamphlet.

[6] See page 2 same pamphlet.

This address of Governor Dorsey of Georgia received widespread comment throughout the country.[7]

The lot of the southern tenant farmer has been notoriously hard, and among his difficulties has been the impossibility of making his laborers live up to their contracts. For many years, there has been a strong public feeling in some parts of the South that the negro will not work unless he is forced to work, and that special legislation is required to force them to perform their labor contracts and to compel them to work out their debts. It was felt that the best method of accomplishing this purpose was the threat of a jail sentence, and this feeling has found expression in the labor legislation similar to the Statute in the instant case. *U. S.* v. *Clement*, 171 Fed. 974.

Legislation of this character has resulted in the establishment and maintenance of a system of peonage by using the authority of the law to keep persons in a condition of involuntary servitude by coercing performance of their labor contracts. *Ex Parte Drayton*, 153 Fed. 986.

The legislators were evidently emboldened to enact such laws by the astonishing decisions of some of the Courts, such as *United States* v. *Eberhardt*, 127 Fed. 254 (D. C. Georgia), where it was held that an indictment charging the defendants with restraining certain negroes of their personal liberty and with compelling them to work for the defendants against their will, did not state an offence within the Federal Statute abolishing peonage, the Court holding that the Statute was not applicable in Georgia *as the system of peonage had never existed in Georgia.* The opinion states (at page 252):

> "However wrongful and illegal some of the acts charged in the indictment may be they cannot be punished under the Statute named."

[7] See *New York Times*, May 1, 1921, Section 2, page 1, column 8; *Literary Digest* May 14, 1921, page 17; *Review of Reviews*, Vol. LXIII No. 6 June, 1921, page 575.

See also, *United States* v. *Broughton*, 213 Fed. 345 (D. C. Ala.); *State* v. *Williams*, 32 S. C. 123; *State* v. *Murray*, 116 La. 655.

A different view of the matter was taken by other judges, from whom came some forthright, courageous pronouncements, such as that of the able, eloquent and comprehensive charge of the court to the Grand Jury in Peonage Cases, 123 Fed. 671 (D. C. Ala.) where it is said (at page 687):

> "An employer with such power over the sustenance and liberty of another is master of his destiny and liberty, and the laborer or renter in such a condition is a serf in all but name."

The entire charge of the court in that case might well be used as a text-book on the law of peonage, and is indeed worthy of the eminent jurist who delivered it.[8]

That this wretched system of peonage has been made possible by the Statute now before this Court, and others of a cognate nature, has been held by the various Federal and State courts which have declared such statutes unconstitutional and void.[9]

The extent to which this vile system, with its resulting brutalities and outrages, has been carried in Georgia is shockingly revealed in the "Murder Farm Cases" of *Williams* v. *State*, 152 Ga. 498, and *Manning* v. *State*, 153 Ga. 184.

It was assumed that the death knell of these iniquitous practices had been sounded when this Court, in the case of

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[8] Judge Thomas G. Jones was an Aide on General Lee's Staff, carried the flag of truce at Appomattox; author of the first Code of ethics adopted by the American Bar Association; Governor of Alabama 1890 to 1894; and a Federal Judge from 1901 until his death in 1914. See 27 *American Bar Ass'n Journal* 263.

[9] *United States* v. *Reynolds*, 235 U. S. 133; *State* v. *Armstead*, 103 Miss. 790; *State* v. *Oliva*, 144 La. 51, *Clyatt* v. *United States*, 197 U. S. 207; *Ex Parte Hollman*, 79 S. C. 9; *Ex Parte Drayton*, 153 Fed. 986; *Taylor* v. *United States*, 244 Fed. 321.

Bailey v. *Alabama*, 219 U. S. 219, declared a similar Alabama Statute violative of the 13th Amendment and of the Acts of Congress forbidding peonage. While there were two dissents in that case, there has been no departure from the principles laid down therein, though the case was decided more than thirty years ago.

The presumption of fraudulent intent is created by the Alabama Statute upon failure to complete the service or to return the money "*without just cause;*" under the Georgia Statute, it is "without good and sufficient cause."

The Statute assailed herein has been before the Supreme Court of Georgia three times since the decision in the *Bailey* case, and in each instance the court has refused to follow the ruling in the *Bailey* case. In the first of these cases, *Latson* v. *Wells*, 136 Ga. 681, the court held that even if Section 2 of the Act was invalid, that Section 1 was valid, notwithstanding the decision in the case of *Bailey* v. *Alabama*, *Supra*, in that the purpose and intent of the Statute was to punish fraud; that Section 2 which creates the presumption of fraudulent intent was merely a rule of evidence and that the court would not pass on the validity of that Section, since the accused had pleaded guilty in the trial court.

In *Wilson* v. *State*, 138 Ga. 489, the second case to come before the Supreme Court of Georgia since the decision in *Bailey* v. *Alabama*, *Supra*, the court held that neither Section 1 nor Section 2 of the Statute was repugnant either to the 13th Amendment or to the Federal Peonage Statutes; that fraud was the gist of the crime, and that the intent and purpose of the Statute was to punish fraud and not merely breach of contract; that the decision in *Bailey* v. *Alabama*, *Supra*, was not controlling because the intent and purpose of the Georgia Statute was to punish fraud; that under the Alabama Statute the defendant could not testify as to his uncommunicated intent, while in

Georgia the defendant can make a statement though not under oath, which the jury have a right to believe, and that the ruling in the *Bailey* case did not rest entirely upon the Statute, but also upon the rule of evidence.

The last time the Statute was before the Supreme Court of Georgia was in the case at bar, in which case the Supreme Court of Georgia simply followed its previous rulings in *Latson* v. *Wells*, *Supra*, and *Wilson* v. *State*, *Supra*, and refused appellant's request to overrule these, as well as all other Georgia decisions, holding the Statute valid and constitutional (R. 40).

It is respectfully submitted that the decisions of the Georgia Supreme Court above set out are convincingly disposed of by the decision and opinion of this Court in *Bailey* v. *Alabama*, *Supra*, and the appellant relies on that decision as being absolutely controlling of the instant case. We can add nothing to the able analysis contained in the opinion of the court in that case, and what is said below is but a summary and repetition of the argument and language used by Mr. Justice Hughes in the opinion in that case.

Under the Statute, it is sufficient for a conviction to show simply that the accused had made the contract in question, had refused to return the money or perform the service without good and sufficient cause, without showing any fraudulent intent on the part of the accused. There is not a scintilla of evidence of fraudulent intent anywhere in the Record, the fraud required by the Statute being supplied by the presumption. The Statute makes criminal the non-payment of a debt. It lends the aid of the criminal law to the enforcement of a mere civil contract without regard to the intent of the defendant, as fraudulent intent is presumed.

The trial court charged the jury in the language of the Statute, and permitted the jury to bring in a verdict of

guilty based solely upon the presumption raised by the Statute. The court charged the jury as follows:

> "Gentlemen of the jury, I charge you the burden is upon the State to show affirmatively that the accused failed to perform the services contracted for, if they show a contract, and failed to return the money advanced on the strength of the contract. The State must prove that there was no good reason why contract was not performed, or no good reason why accused did not return the money advanced to him on the strength of the contract. The State of Georgia must show that the accused failed to perform the contract and in failing to perform the contract, the defendant did so without good and sufficient cause" (R. 21).

If it be argued that the Statute does not require the jury to convict, the point is that the Statute authorizes the jury to convict, and the jury did convict, because the trial court charged the jury that refusal to perform the service or to repay the money, without good and sufficient cause, constituted *prima facie* evidence of the commission of the crime which the Statute defines. The jury found the appellant guilty of an intent to defraud, though more than two or three months elapsed before he was ever called on to perform his contract, according to prosecutor's own testimony (R. 17). In effect, it was the same as if the Statute had made it a crime simply to break the contract. It does not suffice to say that the purpose of the Statute was to punish fraud. In construing the Statute, the court has regard to substance and not form, and the Statute must be tested by its operation and effect. *Near* v. *Minnesota*, 283 U. S. 708; *United States* v. *Reynolds*, 235 U. S. 133.

> "To say that he has been found guilty of an intent to injure or defraud his employer, and not merely for

> breaking his contract and not paying his debt, is a distinction without a difference to Bailey."
> *Bailey* v. *Alabama*, 219 U. S. 219, 236.

The obvious effect of the Statute is to compel, under the coercion of a criminal Statute, the enforcement of a contract for personal service, and to make one guilty of crime who simply fails or refuses to perform such service contract in liquidation of a debt. The Statute seeks to compel the laborer's service by making it a crime to refuse or fail to perform it. The compulsion to serve is brought about by the fear of the punishment prescribed by the law.

> "In contemplation of the law, the compulsion to such service by the fear of punishment under the criminal Statute is more powerful than any guard which the employer could station."
> *Ex Parte Hollman*, 79 S. C. 9.

Under the Georgia law (Code Section 38-415), the accused is prohibited from testifying as a witness under oath to rebut the statutory presumption, and the jury is absolutely free to disregard his unsworn statement. As stated by the court in *Bailey* v. *Alabama*, 219 U. S. 219, 236:

> "He stood, stripped by the Statute of the presumption of innocence, and exposed to conviction for fraud upon evidence only of a breach of contract and a failure to pay."

The real purpose of the Statute is to coerce the laborer to perform the labor required of him under penalty of imprisonment, should he fail or refuse. The presumption created by the Statute is but a legislative judgment enforcing involuntary servitude. It does not imprison the laborer because he refuses to pay the debt or perform the service.

but because he does not enter into or continue in involuntary servitude. There is no punishment for the alleged fraud if the service is performed or the money repaid. Under the guise of the police power, the Statute compels the laborer to continue against his will in the personal service of another.

In the case at bar, the Appellant had previously been arrested on a warrant sworn out by the prosecutor, Hardie, and the money loaned the accused by Hardie was used to pay off the costs of the previous warrant (R. 16). In this respect the case is quite similar to that of *United States* v. *Reynolds*, 235 U. S. 133, where a surety paid the fine upon the negro's agreement to work for him, and subsequently had the negro arrested and convicted for violating his contract for service. In commenting on the operation and effect of the Alabama Statute, the Court said (at page 146):

> "Under this Statute, the surety may cause the arrest of the convict for violation of his labor contract. He may be sentenced and punished for this new offense, and undertake to liquidate the penalty by a new contract of a similar nature, and, if again broken may be again prosecuted, and the convict is thus kept chained to an everturning wheel of servitude to discharge the obligation which he has incurred to his surety, who has entered into an undertaking with the state, or paid money in his behalf. The rearrest of which we have spoken is not because of his failure to pay his fine and costs originally assessed against him by the state. He is arrested at the instance of the surety, and because the law punishes the violation of the contract which the convict has made with him."

Thus, it would seem that in the instant case, Hardie, the prosecutor, by causing the arrest and prosecution of Taylor, and not Taylor, the Appellant, was guilty of crime. *Clyatt*

v. *United States*, 197 U. S. 207; U. S. C. Title 18, Sec. 444; *Davis* v. *United States*, 12 Fed. (2d) 253 (C. C. A. 5th).

In charging the Grand Jury *in re Peonage Charge*, 138 Fed. 686, 690 (D. C. Fla.), the Court spoke as follows:

> "I have described to you the most insidious form of peonage, the form hardest to deal with, because the act of the master is so covered up with legal forms as to give it the semblance of a just criminal proceeding against the servant; but in the exercise of your good sense you will be able to see through any subterfuge that may be adopted, and to get at the real intention of the parties."

The Supreme Court of Georgia in *Wilson* v. *State*, *Supra*, attempts to distinguish *Bailey* v. *Alabama*, *Supra*, upon the ground that under the Alabama Statute the accused is not permitted to testify as to his uncommunicated motives, whereas in Georgia such is not the case, although the accused cannot testify as a witness and could merely make an unsworn statement to the jury.

This attempted distinction is severely criticized by the editors of United States Code Annotated, in U. S. C. Title 8 Sec. 56, at page 66, where it is stated that while the rule of evidence may have played some part in the decision in *Bailey* v. *Alabama*, it was not at all a determinative factor in the case, as is readily disclosed by a reading of the opinion of Mr. Justice Hughes in that case, which expressly denies the validity of the Statute on the constitutional grounds above set out. The rule of evidence is mentioned only as an additional factor which entered into the court's decision.

> "If this Act and others of cognate character are sustained, the State may by its criminal laws completely nullify and abrogate the main object of the amendment prohibiting slavery and involuntary servitude, and establish a complete system of peonage."
>
> *Ex Parte Drayton*, 153 Fed. 986, 992 (D. C. S. Car.).

II.

The presumption created by the statute is so arbitrary and unreasonable as to constitute a denial of due process of law and the equal protection of the laws.

The power of a State to regulate the procedure and rules of evidence in its courts does not go to the extent of authorizing it to create by Statute an arbitrary presumption of guilt, even though the presumption is prima facie only. A legislature may not declare a person guilty or presumptively guilty of crime. *McFarland* v. *American Sugar Refining Co.*, 241 U. S. 79.

There must be some reasonable and logical connection between the thing proved and the thing which the State presumes as an inference therefrom. If the inference is unreasonable and arbitrary, the Defendant convicted thereby is denied Due Process of law. These principles are now well settled. *Manley* v. *Georgia*, 279 U. S. 1; *Western & Atlantic Railroad Co.* v. *Henderson*, 279 U. S. 639.

In *Bailey* v. *Alabama*, 219 U. S. 219, this Court, having held that the Alabama Statute was repugnant to the 13th Amendment and to the Federal Peonage Statutes, said that it was unnecessary to consider the contention that the Statute also violated the 14th Amendment, yet the Court, in its opinion, denies the right of a State to adopt a Statute making proof of one fact prima facie evidence of the main fact at issue where the presumption is purely arbitrary and unreasonable, and states (at page 239):

> "It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption, any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions."

Likewise in *Hodges* v. *United States*, 203 U. S. 1, Mr. Justice Harlan, in dissenting from the judgment of the court, said (at page 28):

> "It may also be observed that the freedom created and established by the 13th Amendment was further protected against assault when the 14th Amendment became a part of the supreme law of the land; for that Amendment provided that no state shall deprive any person of life, liberty, or property without due process of law. To deprive any person of a privilege inhering in the freedom ordained and established by the 13th Amendment is to deprive him of a privilege inhering in the liberty recognized by the 14th Amendment."

In *Manley* v. *Georgia*, 279 U. S. 1, the court held that a Georgia Statute, providing that every insolvency of a Bank shall be deemed fraudulent as to the President and Directors, operates as a denial of Due Process. In the opinion, the court stated that inference of crime and guilt may not reasonably be drawn from inability to pay demand deposits and other debts as they mature, and held that a Georgia Statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the Due Process Clause.

In the instant case, the failure to return the money or complete the service bears no reasonable relation to the fact presumed, namely fraudulent intent, for the failure to return the money or perform the service furnishes no basis for any inference as to whether the accused intended to perform the service at the time he obtained the money. Whenever a person violates a contract by refusing to pay a note or other debt and a judgment is taken against him, that is a solemn adjudication that he does so "without good and sufficient cause," yet it cannot be argued that it is fraudulent. The State denies the accused a fair

opportunity to repel the presumption of fraudulent intent, in that the accused is required to show a "good and sufficient cause" why the service was not completed or the money returned. The issue is whether the promise was made with fraudulent intent and the State cannot substitute presumption for proof, thereby denying the Defendant the right to prove as a complete defense that at the time the promise was made there was no intent to defraud. The requirement that the Defendant must show that he was prevented from fulfilling the promise, in addition to proving that it was not knowingly false when made, has the effect of closing the doors of the court in his face and of depriving him of the right to deny the charge against him. In its operation and effect, the Statute casts upon the accused the burden of showing the absence of any fraudulent intent, and, in essence, his innocence of the crime with which he is charged—this being an unreasonable and arbitrary exercise of its power by the State. The right of the Defendant to rebut such presumption cannot be limited by the Statute to "good and sufficient cause." The inference of one fact from proof of another is so unreasonable as to be purely arbitrary. It amounts to an arbitrary declaration by the Legislature that the accused is guilty, or presumptively guilty, of crime, and operates to deny him a fair opportunity to repel it. The Statute, in raising the presumption of fraudulent intent, does not merely lay down a rule of evidence, but creates an inference which is given the effect of evidence, and which prevails unless overcome by the weight of opposing testimony. This denies Due Process of law. *Western & Atlantic Railroad Co.* v. *Henderson*, 279 U. S. 639.

In *Manley* v. *Georgia*, 279 U. S. 1, it is said:

> "Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty or property" (page 6).

The Statute puts the burden on the accused to explain away every fact which might tend to show fraudulent intent. Especially is this a denial of Due Process to the appellant, since under the laws of Georgia he was not permitted for the purpose of rebutting the statutory presumption to testify as a witness under oath, though he was permitted to make an unsworn statement to the jury which the jury was entitled to accept or wholly reject. *Georgia Code*, 1933, Sec. 38-415.

It is true that the Court held in *Hawes* v. *U. S.*, 258 U. S. 1, that this in itself is not sufficient to prevent the State from raising a presumption against the accused, but that such a statutory disqualification of the defendant as a witness is a factor which must be given some consideration in construing the reasonableness of the presumption, is pointed out in the opinion in *Bailey* v. *Alabama*, *supra*, though it is mentioned only as an additional factor entering into the decision. The Statute thus operates to deprive the accused of the right to present his defense to the main fact presumed by the Statute. It fails to afford him a reasonable opportunity to submit under oath to the jury in his defense all of the facts bearing upon the issue, and thus fails to provide the accused the Equal Protection of the law and Due Process of law.

It is significant that similar Labor Service Statutes have been declared unconstitutional in other States even though in these jurisdictions the defendant was not deprived of his right to testify as a witness under oath. *State* v. *Oliva*, 144 La. 51; *Good* v. *Nelson*, 73 Fla. 29; *State* v. *Armstead*, 153 Miss. 790; *Ex Parte Hollman*, 79 S. C. 9; *Ex Parte Drayton*, 153 Fed. 986 (D. C. So. Car.).

In view of the foregoing, it is respectfully submitted that the presumption now before the Court is so unreasonable, arbitrary, harsh and oppressive, as to constitute a

denial of Due Process of Law and to deny the accused the Equal Protection of the law.

III.

The Statute is so vague and indefinite as to constitute a denial of Due Process of law.

In so far as the Statute provides that failure to perform the services or to return the money "without good and sufficient cause" shall be deemed presumptive evidence of an intent to defraud, the Statute is too vague and indefinite to provide a sufficiently ascertainable standard of guilt, the Statute failing to define what is meant by "good and sufficient cause."

> "The words themselves have no ascertainable meaning, either inherent or historical."
>
> *Thornhill* v. *Alabama*, 310 U. S. 88, at page 100.

The Statute points out no specific action or conduct on the part of the accused as satisfying the words "good and sufficient cause." It furnishes no guide or standard by which court or jury may appraise the conduct of the accused and judge as to his guilt. In this respect the Statute fails to furnish a sufficiently ascertainable standard of guilt to satisfy the requirements of due process. *Herndon* v. *Lowry*, 301 U. S. 242.

Taken as a whole the Statute does no more than submit to a jury the question of whether in their judgment the conduct of the accused in failing to comply with his contract is such that on general principles he should be condemned to penal servitude.

In *Lanzetta* v. *State of New Jersey*, 306 U. S. 451, 453, this Court announced the ruling that:

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal

statutes. All are entitled to be informed as to what the State commands or forbids."

Due Process of Law imposes upon a State an obligation to frame its criminal statutes so that those to whom they are addressed may know what standard of conduct is intended to be required. *Cline* v. *Frink Dairy Co.*, 274 U. S. 445, 458.

A Statute denies Due Process of law if it fails to furnish the accused information as to the nature and cause of the accusation against him. *Weeds* v. *United States*, 255 U. S. 109.

In *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, an Act of Congress made it a crime for any person "wilfully to make any unjust or unreasonable rate or charge in handling or dealing with any necessaries." The Court held that the "unjust or unreasonable" test was so vague as to make the Statute void as a denial of Due Process of law.

The two cases last cited arose under the 5th Amendment as they involved Congressional legislation. Of course, the same principle applies to State legislation under the 14th Amendment.

The essential elements of Due Process of law are notice and an opportunity to defend, and in determining whether such rights are denied, the Court should be governed by the substance of things and not be mere form. *United States* v. *Cruikshank*, 92 U. S. 542.

From the foregoing authorities, the principles to be applied to the instant case are well settled and are easily stated. The standard applicable to criminal liability is not that to be applied in civil matters. It must be more definite. It must be one which will enable the average man to determine at the time he acts whether or not he is violating the law. It must not leave the ascertainment of guilt

to the idiosyncrasies and varying opinions of those who happen to compose the court and jury.

> "• • • and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

Connally v. *General Construction Co.*, 269 U. S. 385, 391.

The constitutional right of the defendant to be informed of the nature of the accusation against him entitles him also to insist at the outset that the indictment shall apprise him of the crime charged, with such reasonable certainty that he can make his defense and properly protect himself. *Rosen* v. *United States*, 161 U. S. 29.

Many other cases could be cited to like effect. The sum and substance of the whole matter is that no information whatever is given to the Defendant as to the matters on which he is really to be tried; that the actual operation of the Statute in the instant case places the Defendant before a jury with a sweeping presumption of guilt against him, and without that notice of the real nature of the accusation against him which is of the essence of Due Process of Law.

IV.

The statute is repugnant to the equal protection clause of the 14th Amendment, because it creates an unlawful discrimination against the laboring class and confers a special privilege or immunity on all other persons.

Under the terms of the Statute, the laborer is punished for his breach, while no penalty is provided for the employer. Such a Statute is not a legitimate exercise of the power of classification, rests upon no reasonable basis, is

purely arbitrary, and plainly denies the Equal Protection of the law to those against whom it discriminates.

In commenting on a similar Alabama Statute, the Court said in *Peonage Cases*, 123 Fed. 671 (D. C. Ala.) (at pages 688-689-691):

> "It is a vicious species of class legislation. • • • Legislative power cannot arbitrarily single out particular classes of persons and put burdens upon them, bottomed upon breaches of their contracts, to prevent their working elsewhere, which are not enforced against other classes or person, similarly circumstanced, who break like contracts. • • • It is unjust discrimination against a class, and the denial of 'the equal protection of the law' to laborers, and renters who contract to cutlivate crops. It attaches consequences to the breaches of their contract obligations, and erects barriers to their right to pursue their usual callings, which are raised up by law against no other class of men under like circumstances. It attempts to coerce performance of their contracts of personal service by means unknown to the law of the land, in the same localities, upon breaches of like contracts by all other classes of citizens."

In *Ex Parte Hollman*, 79 S. C. 9, the Court, in holding a similar Statute violative of the 14th Amendment, because it did not bear equally on the employer and employee, said:

> "The parties to a contract are entitled to equal sanctions of the law for the protection and enforcement of their rights under it."

In *Ex Parte Drayton*, 153 Fed. 986 (D. C. S. Car.), the Court held that a Statute almost identical with the Statute in the instant case was violative of the equality clause of the 14th Amendment, being intended to cover agricultural laborers only, and said:

> "It is directed towards a single class of citizens, which is arbitrarily singled out and punished for failure to perform certain duties." (P. 991.)

Conclusion.

We wish, in conclusion, to quote, as appropriate to the case at Bar, the exalted language of Mr. Justice Black, found in the opinion in *Chambers* v. *Florida*, 309 U. S. 229, as follows:

> "The scope and operation of the Fourteenth Amendment have been fruitful sources of controversy in our constitutional history. However, in view of its historical setting and the wrongs which called it into being, the due process provision of the Fourteenth Amendment—just as that in the Fifth—has led few to doubt that it was intended to guarantee procedural standards adequate and appropriate, then and thereafter, to protect, at all times people charged with or suspected of crime by those holding positions of power and authority." (Page 235.)
>
> "Today, as in ages past, we are not without tragic proof that the exalted power of some governments to punish manufactured crime dictatorially is the handmaid of tyranny. Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement." (Page 241.)

A ringing pronouncement from this tribunal, declaring this oppressive Statute unconstitutional and void, would constitute a second Emancipation Proclamation for the present debtor slaves in Georgia.

Respectfully submitted,

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